In this case the court refers to a consideration that should give strong support to the reasonableness of the decision in the instant case; namely, that in cases of this class the facts giving rise to the negligent act are peculiarly within the knowledge of the perpetrator.

RATES—INDIVIDUAL CITY OR REGION AS THE UNIT IN FIXING.—A Wisconsin statute entitles the users to a judicial review on the question whether a rate promulgated by the commission is a lawful rate. The Wisconsin-Minnesota Light and Power Company, a defendant, furnishes power and current to some thirty cities and towns in the state. Defendant commission, in fixing the rate, treated the cities as a unit. On contest of the rate by the cities of Eau Claire and Chippewa Falls, *held,* the municipality is the entity on the one hand and the utility is the entity on the other for the purpose of establishing just and reasonable rates. *City of Eau Claire et al. v. Railroad Commission et al.* (Wis., 1922), 189 N. W. 476.

Where the rate is fixed by legislative authority, the utility cannot complain if the return on its whole property is fair and reasonable, although as to some consumers it will be furnishing services at a loss, *Lincoln Gas and Electric Company v. Lincoln,* 182 Fed. 926; or, as to some parts of the system, the rate will not pay the cost of carriage, *Puget Sound Traction, Light and Power Company v. Reynolds et al.,* 244 U. S. 574. See 13 MICH. L. REV. 407 and 676, as to the scope of and the limitations upon this rule. From the standpoint of the public, in the absence of statute giving the right, the users cannot complain in court on the ground that the rate fixed by the legislature is unreasonably high as to them, since the granting of any rate above that necessary to protect the constitutional rights of the company is a matter of legislative policy, and when fixed is done by the public's agency for the purpose, and no constitutional rights are violated. *Brooklyn Union Gas Company v. City of New York,* 100 N. Y. Supp. 570, 188 N. Y. 334; *St. Paul Book and Stationery Co. v. St. Paul Gaslight Company,* 130 Minn. 71. See 17 MICH. L. REV. 429 and 18, *ib.* 320 and 806, for cases where the municipality holds contract rates with the utility. Where the question has been urged by complaining communities before commissions, the latter generally, if not always, have ruled against them on the ground of impracticability of an accurate ascertainment of a rate for each separate municipality, and that it was not unreasonable to treat them as a unit where all were being served by the same company. *Re Rockland Electric Co.* (N. J.), P. U. R. 1915D, 683; *Glenview Improvement Club v. People's Water Co.* (Cal.), P. U. R. 1918F, 187; *Village of Andover v. Empire Gas and Fuel Co.* (N. Y.), P. U. R. 1920A, 702; *Re Chesapeake and Potomac Telephone Co.* (W. Va.), P. U. R. 1921B, 97; *Re Utah Power and Light Co.* (Utah), P. U. R. 1921C, 294; *Re Missouri Gas and Electric Service Co.* (Mo.), P. U. R. 1921D, 687. But in the *Village of Andover* case the commission considered that the contention that the individual city should be the unit in fixing rates was one of some merit and should be considered where circumstances warrant. Likewise, in *Re Missouri Gas and Electric Service Co., supra,* the commission recognized that the utility

might, by extending a spur an unreasonable distance to serve a small community, throw a burden upon the others which they would consider to be unfair. Whether the question were raised in court by an aggrieved member of the public under a statutory right, or before the commission in the absence of such right, its determination would appear to depend upon the degree of unfairness worked by the uniform rate, in the absence of a clear legislative declaration that the individual city should be the unit for fixing the rate. The majority of the court in the principal case held the individual city should be the unit, in the absence of legislative declaration to the contrary.

SALES—BARTER AND EXCHANGE HELD SYNONYMOUS WITH SALE.—The defendant demurred to an indictment charging the "sale, barter and exchange" of intoxicating liquor, on the grounds of duplicity. *Held*, that a barter and exchange was a sale. *Young v. State* (Texas, 1922), 243 S. W. 472.

In construing statutes prohibiting the "sale" of intoxicating liquors, the decisions of the courts are irreconcilable. On the one side it is held that a transfer of liquor for a promise to return a like kind and quantity of liquor is not a "sale" within the meaning of the statute prohibiting such "sales." *Gillan v. State*, 47 Ark. 555; *Jones v. State*, 108 Miss. 530; *Coker v. State*, 91 Ala. 92. The courts which hold that a "barter and exchange" is a "sale" within the meaning of the statute all presume an intent on the part of the legislature to prohibit the disposal of liquors, either by sale or barter. *State v. Mary Teahan*, 50 Conn. 92; *Com. v. Abrams*, 150 Mass. 393; *Keaton v. State* (Texas, 1896), 38 S. W. 522. Benjamin defines a "sale" as the transfer of goods from one man to another for a price in money; and a barter as a transfer of goods for goods. BENJ. ON SALES, Ed. 7, p. 2. Accord, STORY ON SALES, Ed. 4, p. 199. But Blackstone says, "a sale or exchange is a transmutation of property from one man to another, in consideration of some price or recompense in value." BL. COMM., Bk. II, p. 446. The courts are agreed that a transfer of goods for a pecuniary consideration is a "sale." *Koehler v. St. Mary's Brew. Co.*, 228 Pa. 648; *U. S. v. Ash*, 75 Fed. 651; *DeBary v. Dunne*, 172 Fed. 940. And it has been held that proof of an exchange of goods will not support an averment of a "sale" of these goods. *Vail v. Strong*, 10 Vt. 457; *Stevenson v. State*, 65 Ind. 409. It is also generally agreed that if the goods transferred are estimated in terms of money, then such transfer will constitute a "sale." *Brunsvold v. Medgorden* (Iowa, 1915), 153 N. W. 163; *Boardman Co. v. Petch* (Cal., 1921), 199 Pac. 1047. But according to *Gunter v. Leckey*, 30 Ala. 591, a transfer of part goods and part money for other goods is not a "sale" when such other goods are not estimated in terms of money. For further discussion of this topic, see 20 MICH. L. REV. 362.

SALES—PASSAGE OF TITLE TO GOODS NOT IDENTIFIED AT TIME OF CONTRACT. —The petitioners contracted with a broker for the purchase of bonds, paying in advance the estimated purchase price. After acquiring the bonds the broker was to forward them by mail, but before doing so he was declared